

**STATE OF TENNESSEE**

OFFICE OF THE  
ATTORNEY GENERAL  
425 FIFTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37243

September 11, 2000

Opinion No. 00-142

Memphis City School System — School Board Members' Compensation

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**QUESTIONS**

1. Who sets the compensation rate for Memphis School Board members?
2. Can the Memphis City Council increase or decrease this compensation?
3. Does the Memphis City Council determine and approve the referendum time line for the voting electorate?

**OPINIONS**

1. The Memphis City Council sets the salary of the Memphis School Board's president and the School Board itself sets the compensation rate for its members.
2. The Memphis City Council can change the School Board's president's salary. It cannot alter the compensation rate for other School Board members.
3. There is no authority or requirement in the private acts regarding the School Board's compensation rate to hold a referendum.

**ANALYSIS**

The Memphis City School System operates under a charter granted by the General Assembly to the Memphis Board of Education by Chapter 30 of the 1869-70 Private Acts of Tennessee. *See Board of Education of Memphis City Schools v. Shelby County*, 339 S.W.2d 569, 583 (Tenn. 1960). The original charter, 1869-70 Priv. Acts, Ch. 30, did not set salaries or compensation rates for Memphis School Board members. Currently, the Memphis City Council has set the question of an increase in board members' compensation for a referendum vote on November 7.

The Memphis City School System's charter has been amended many times. Four of the amending acts are relevant to this discussion. Each includes provisions on Memphis School Board members' compensation. Two are valid; two are void. The acts are

1. 1883 Private Acts, Chapter 17
2. 1951 Private Acts, Chapter 378
3. 1970 Private Acts, Chapter 340
4. 2000 Private Acts, Chapter 141

Chapter 141 of the 2000 Private Acts gives the Memphis City Council the authority to alter the compensation of School Board members, subject to approval in a referendum of all registered voters.<sup>1</sup> Chapter 141 is invalid. It amends 1970 Priv. Acts, Ch. 340, which is void. Chapter 340 never became effective.<sup>2</sup> An act to be amended must be in existence. *See State v. Dixie Finance Co.*, 152 Tenn. 306, 316-17, 278 S.W.2d 59, 61-62 (1925). Thus an amendatory act which attempts to amend a void act is void as well. *See Tiger Creek Bus Line v. Tiger Creek Transportation Association*, 187 Tenn. 654, 660, 216 S.W.2d 348, 350 (1948).

The most recent valid amendment of 1869-70 Priv. Acts, Ch. 30, pertaining to school board members' compensation, is 1951 Priv. Acts, Ch. 378. This 1951 private act amended 1883 Priv. Act, Ch. 17. The 1883 act had set school board members' salaries, had specifically applied to Memphis City Schools and had repealed any sections of 1869-70 Priv. Acts, Ch. 30, inconsistent with the 1883 act. Chapter 378 of the 1951 Private Acts states in relevant part as follows:

Sec. 2. . . . [T]he salary of the President of the Board of Education in such taxing district<sup>3</sup> shall be fixed by the Board of Commissioners or other

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<sup>1</sup> Chapter 141 intended to add the following language to 1970 Priv. Acts, Ch. 340:

(b) The compensation of members of the board of education may be altered by the Memphis City Council, subject to approval in a referendum of all registered voters in the City of Memphis, provided that in no event shall such compensation exceed the compensation of members of the Memphis City Council. The referendum on any such change in compensation shall be held at the next regularly scheduled state general election occurring after such action by the Memphis City Council.

<sup>2</sup> The published act is followed with this statement by Joe C. Carr, then Secretary of State:

This is to certify that according to the official records in this office, House Bill No. 1993, which is Chapter No. 340 of the Private Acts of 1970, was rejected or disapproved or not concurred in by the proper authorities and is therefore not operative and not in effect in accordance with its provisions and the Constitution as amended.

<sup>3</sup> The City of Memphis is the taxing district. The Memphis City School Board does not have taxing authority.

governing body of such taxing district, in such amount per annum as said Board of Commissioners or other governing body shall deem proper . .

..

Sec. 3. . . . [T]he Board of Education shall fix the salaries of the other [school board members] . . .

Therefore, this Office concludes that the Memphis City Council sets the salary of the president of the Memphis School Board, and the School Board sets the salaries of the other School Board members. The Memphis City Council can alter the School Board president's salary. It cannot alter the salaries of the other School Board members. No referendum is required.

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